

Private foundation; organization supported by foreign government. An exempt organization organized in a foreign country and receiving a substantial portion of its support from a foreign government is not a private foundation as defined in section 509(a) of the Code.

Advice has been requested whether the nonprofit organization described below is a private foundation as defined in section 509(a) of the Internal Revenue Code of 1954.

The organization is described in section 501(c)(3) of the Code. It was organized in a foreign country and receives a substantial part of its support from a foreign government.

Section 509(a)(1) of the Code provides that the term private foundation means a domestic or foreign organization described in section 501(c)(3) other than an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)).

An organization is described in section 170(b)(1)(A)(vi) of the Code if it is referred to an subsection (c)(2) and normally receives a substantial part of its support from a governmental unit referred to in subsection (c)(1).

Section 170(c)(1) of the Code refers to a State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia.

Section 170(c)(2) of the Code refers to a corporation, trust, or community chest, fund, or foundation created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States.

Section 1.509(a)-2 of the Income Tax Regulations provides that an organization may qualify as a section 509(a)(1) organization regardless of the fact that it does not satisfy section 170(c)(2) of the Code because it was created or organized other than in, or under the law of, the United States, any State or territory, the District of Columbia, or any possession of the United States.

The regulations under section 509 of the Code do not deal specifically with the question of whether foreign government support may be considered in determining whether a foreign organization may be excluded from private foundation status under section 509(a)(1) as an organization described in section 170(b)(1)(A)(vi). The regulations do indicate, however, that foreign organizations are to be treated the same as domestic organizations described in section 170(b)(1)(A)(vi) for purposes of section 509(a). Thus, consistent with this approach, support by a foreign government may be considered in determining an

organization's qualification under section 509(a) as an organization described in section 170(b)(1)(A)(vi). Therefore, the organization is not a private foundation as defined in section 509(a) of the Code.